

New Mexico Taxation and Revenue Department
**2011 Annual Withholding of Oil and Gas
Proceeds Detail Report**



Page 1 of

Check if amended ☐

Remitter's name	Remitter's FEIN or SSN Check one: <input type="checkbox"/> FEIN <input type="checkbox"/> SSN	Line 1. Total New Mexico gross oil and gas proceeds distributed by the remitter.
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Remittee's name, street address, city, state, ZIP code	Column 2 Remittee's SSN/FEIN	Column 3 Remittee's oil and gas proceeds	Column 4 Tax withheld and paid by the remitter
Check if outside the U.S. <input type="checkbox"/>	Check one: <input type="checkbox"/> FEIN <input type="checkbox"/> SSN		
Check if outside the U.S. <input type="checkbox"/>	Check one: <input type="checkbox"/> FEIN <input type="checkbox"/> SSN		
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Check if outside the U.S. <input type="checkbox"/>	Check one: <input type="checkbox"/> FEIN <input type="checkbox"/> SSN		

File this report on-line using the Department's web site at <https://efile.state.nm.us>. If you cannot electronically file, see the instructions. For assistance completing this return call (505) 827-0825.

Line 2. Total withholding this page.

2.

Line 3. Total withholding from all pages.

3.

I declare I have examined this form and to the best of my knowledge and belief it is true, correct and complete.

Authorized signature _____ Date _____

Phone number _____ E-mail address _____

OGP-D

New Mexico Taxation and Revenue Department
**2011 Annual Withholding of Oil and Gas
Proceeds Detail Report**
- Supplemental Form



Remitter's name	Remitter's FEIN or SSN	Check one: <input type="checkbox"/> FEIN <input type="checkbox"/> SSN
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Page _____ of _____

Remittee's name, street address, city, state, ZIP code	Column 2 Remittee's SSN/FEIN	Column 3 Remittee's oil and gas proceeds	Column 4 Tax withheld and paid by the remitter
Check if outside the U.S. <input type="checkbox"/>	Check one: <input type="checkbox"/> FEIN <input type="checkbox"/> SSN		
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Check if outside the U.S. <input type="checkbox"/>	Check one: <input type="checkbox"/> FEIN <input type="checkbox"/> SSN		

If more space is needed, print the Supplemental Form directly from the website and attach the additional supplemental forms to the first page of this form. Reproducing from a photocopy reduces the readability of the bar code on scanning equipment.

Line 2. Total withholding this page.

2.

OGP-D

2011 Annual Withholding of Oil and Gas Proceeds Detail Report Instructions - Page 1 of 3

Who Must File: Remitters of oil and gas proceeds from oil and gas production from a well located in New Mexico who are subject to withholding tax from payments according to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act (7-3A-1 through 7-3A-9 NMSA 1978) are required to submit information to the Department annually. On Form RPD-41360, *Annual Withholding of Oil and Gas Proceeds Detail Report*, report total oil and gas proceeds paid and New Mexico tax withheld for each remittee. Form RPD-41360 can be filed electronically on the Department's web site. The remitter may also mail a paper Form RPD-41360 to the Department. The requirement to file may also be satisfied if the remitter both 1) submits an income and withholding tax information return to the Department **and** 2) provides the Department with an electronic file in the manner prescribed by the Department, reporting the remittees to whom oil and gas proceeds was paid but no tax was withheld.

Other Reporting Requirements: Remitters are also required to provide sufficient information to enable the remittees to comply with the provisions of the Income Tax Act and the Corporate Income and Franchise Tax Act, with respect to the remittee's share of the gross oil and gas proceeds. A remitter may use federal Form 1099Misc, if required to be filed by the IRS, a pro-forma 1099Misc, or Form RPD-41285, *Annual Statement of Withholding of Oil and Gas Proceeds*, to report to the remittees the gross oil and gas proceeds paid and New Mexico tax withheld. These forms must be provided to the remittee by February 15th of the year following the year for which the statement is made. For tax years 2011 and after, copies of these forms do not need to be submitted to the Department provided Form RPD-41360 is filed. The information is provided when you file the annual Form RPD-41360. See also "Electronic Filing Requirements in Lieu of Filing Form RPD-41360". Note: For tax years beginning January 1, 2011, Form RPD-41283, *Annual Summary of Oil and Gas Proceeds Withholding Tax*, is no longer required.

A remitter who is also a pass-through entity (PTE), may also need to file Form RPD-41359, *Annual Statement of Pass-Through Entity Withholding*, and Form RPD-41367, *Annual Withholding of Net Income of a Pass-Through Entity Detail Report*. As a PTE, similar withholding requirements are imposed on the net income of the pass-through entity. If you earn net income for the owners, members, partners or beneficiaries of your organization, then pass-through entity net income and withholding tax is reported on these forms. Forms RPD-41360, *Annual Withholding of Oil and Gas Proceeds Detail Report*, and RPD-41285, *Annual Statement of Withholding of Oil and Gas Proceeds*, described in the remainder of this document, are used only when oil and gas proceeds are paid to a remittee.

When to File: For tax year 2011, Form RPD-41360 is due on or before October 15, 2012. An extension of time to file this report has been granted for tax year 2011 only. The 2011 extension is granted to allow remitters time to transition to the new reporting requirements. Generally, Form RPD-41360, is

due on or before the last day of February of the year following the close of the calendar year in which the oil and gas proceeds were paid. If the due date of the return falls on a Saturday, Sunday or state or national legal holiday, the return is timely if the postmark bears the date of the next business day. If no payment of oil and gas proceeds was made for a calendar year, no return is due.

Penalty for Failure to File. For tax years beginning on or after January 1, 2011, but before January 1, 2012, no penalty will be assessed for failure to file this report when due. For tax years beginning on or after January 1, 2012, a five dollar penalty will be assessed for failing to file this report timely. You may pay the penalty through the Department's web site at <https://efile.state.nm.us>, or submit your payment by attaching a check or money order to your paper return.

Where to File: File online using the Department's web site at <https://efile.state.nm.us>. A remitter filing this form for the first time, who has not previously filed any New Mexico tax return to the Taxation and Revenue Department, using the remitter's name and federal employer's identification number as shown on this form, will need to file this form by paper. If you have previously filed this form or any New Mexico tax return, you are encouraged to file using the Department's web site. First-time e-filers will need to create a login and password. If you cannot electronically file this Form RPD-41360, you may submit this form to: New Mexico Taxation and Revenue Department, P.O. Box 25127, Santa Fe, NM 87504-5127. For assistance completing this return call (505) 827-0825.

Electronic Filing Requirements in Lieu of Filing Form RPD-41360: Remitters do not need to submit Form RPD-41360, *2011 Annual Withholding of Oil and Gas Proceeds Detail Report*, if:

1. the remitter submits income and withholding tax information to the Department for remittees as described below, **and**
2. provides the Department with an electronic file in the manner prescribed by the Department, reporting the remittees to whom oil and gas proceeds was paid but no tax was withheld.

The income and withholding tax information must be submitted on either Form 1099Misc or state Form RPD-41285, *Annual Statement of Withholding of Oil and Gas Proceeds*, and must be submitted in one of the following ways:

1. Submit 1099Misc forms by electronic transmission through the Combined Federal/State Filing Program with IRS approval (State records must be included and must bear codes for forwarding to New Mexico), **or**
2. Submit the paper forms to New Mexico Taxation and Revenue Department, P.O. Box 5779, Santa Fe, New Mexico 87502-5779.

The electronic file to be submitted to the Department must be in a specific file data format and record layout and submitted using an input source that is being developed for implementation on or after January 1, 2012. This electronic file is different

2011 Annual Withholding of Oil and Gas Proceeds Detail Report

Instructions - Page 2 of 3

than the electronic web applications developed for submitting Form RPD-41360. It must contain the name, address and federal identification number (FEIN or SSN) for all remittees that were distributed oil and gas proceeds during the report year, but for whom no oil and gas proceeds withholding tax was withheld. Remittees that had tax withheld and a 1099Misc form or Form RPD-41285 was submitted to the Department as described in the previous paragraph are not required to be included in this electronic file. Also included will be the FEIN of the sender and the report year. Information regarding the development of the file format specifications and process for submission will be posted to the Department's web site beginning in December of 2011. The due date of the electronic file is the same due date as the due date for Form RPD-41360. See "When to File". The due date for the 2011 electronic file is also extended to October 15, 2012.

Remitters should be aware that the Department is required to compare the tax information received from the remitters with the records of the remittees and if the Department determines that the remittee is not paying the proper tax on oil and gas proceeds, the Department may request that the remitter show reasonable cause for not withholding (See "Exceptions to the Requirement to Withhold" in these instructions). If the Department determines that a non-resident remittee is not paying New Mexico income tax on the oil and gas proceeds, the Department will notify the remitter that the remitter must withhold from future oil and gas proceeds paid to the remittee. Upon notification, the remitter will be held responsible for future tax required to be withheld from the remittee.

INSTRUCTIONS FOR COMPLETING THE FORM

Enter the name of the remitter, the federal identification number and mark the box indicating whether the number is a federal employer identification number (FEIN) or a social security number (SSN). Also enter the total New Mexico gross oil and gas proceeds distributed by the remitter in the calendar year of this return.

Column 1. Enter the name and address of all recipients (remittees) of oil and gas proceeds made by this payor (remitter). If an individual, enter the first, middle initial and last name of the remittee. If the remittee is an individual who is a resident of New Mexico, or a corporation whose principal place of business is in New Mexico, enter the New Mexico address where the remittee resides or conducts business. Do not enter a post office box. Mark the box if the address is outside the U.S..

Column 2. Enter the remittee's federal identification number and mark the box indicating whether the number is a federal employer identification number (FEIN) or a social security number (SSN).

Column 3. Enter the remittee's share of the total gross New Mexico oil and gas proceeds paid. The total of column 3 on all pages must equal Line 1, *Total New Mexico gross oil and*

gas proceeds.

Column 4. Enter the remittee's withholding tax paid by the remitter for the calendar year. The total of column 4 on all pages must be equal to the amount paid for the four calendar quarters for the tax year on Forms RPD-41284, *Quarterly Oil and Gas Proceeds Withholding Tax Return*.

If the total of column 4 for all pages does not equal the amount of withholding tax reported on Forms RPD-41284, *Quarterly Oil and Gas Proceeds Withholding Tax Return*, filed for the calendar year, determine the quarter in which the withholding tax was incorrectly reported and amend that return. You must amend each return affected. If a refund is due, also attach Form RPD-41071, *Application for Tax Refund*, to the amended Form(s) RPD-41284.

Complete **line 2** for each page, entering the sum of column 4 for the page. Also complete **line 3** on the first page showing the total tax withheld and paid by the remitter to the Department on Forms RPD-41284, from all pages.

Sign and date the report.

Amending: Check the amended indicator box if you are amending a previously filed RPD-41360, *2011 Annual Withholding of Oil and Gas Proceeds Detail Report*. If requesting a refund due to an overpayment of tax withheld, see the instructions for column 4.

IMPORTANT DEFINITIONS:

"Remittee" means a person who is entitled to payment of oil and gas proceeds by a remitter.

"Remitter" means a person who pays oil and gas proceeds to any remittee.

"Oil and gas" means crude oil, natural gas, liquid hydrocarbons or any combination thereof, or carbon dioxide.

For definitions of *"Oil and gas proceeds"* see "What are gross oil and gas proceeds?" in these instructions.

"Pass-through entity" means a personal services business or any other business association other than:

- a sole proprietorship;
- an estate or trust that does not distribute income to beneficiaries;
- a corporation, limited liability company, partnership or other entity not a sole proprietorship taxed as a corporation for federal income tax purposes for the tax year;
- a partnership that is organized as an investment partnership in which the partner's income is derived solely from interest, dividends and sales of securities;
- a single member limited liability company that is treated as a disregarded entity for federal income tax purposes; or
- a publicly traded partnership as defined in Subsection (b) of Section 7704 of the Internal Revenue Code.

What are gross oil and gas proceeds?

"Oil and gas proceeds" means any amount derived from oil and gas production from any well located in New Mexico

2011 Annual Withholding of Oil and Gas Proceeds Detail Report

Instructions - Page 3 of 3

and payable as royalty interest, overriding royalty interest, production payment interest, working interest or any other obligation expressed as a right to a specified interest in the cash proceeds received from the sale of oil and gas production or in the cash value of that production. Oil and gas proceeds excludes "net profits interest" and other types of interest the extent of which cannot be determined with reference to a specified share of the oil and gas production and excludes any amounts deducted by the remitter from payments to interest owners or paid by interest owners to the remitter that are for expenses related to the production from the well or cessation of production from the well for which the interest owner is liable.

"Gross oil and gas proceeds" means the amount of oil and gas proceeds subject to oil and gas proceeds withholding tax and includes amounts deducted by the remitter for expenses and severance taxes, but does not include amounts deducted for expenses or taxes prior to receipt by the remitter.

The well must be located in New Mexico, but if the production is from a well subject to a unit or communitization agreement whose area crosses state boundaries, the amount attributable to "oil and gas production from any well located in New Mexico" may be derived through the allocation methodology set out in the agreement.

Adjustments to the amount withheld: If a remitter receives oil and gas proceeds from which an amount has been deducted and withheld pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act, the remitter may take credit for that amount in determining the amount the remitter must withhold and deduct.

Exceptions to the requirement to withhold.

1. If the amount to be withheld from the payment is less than ten dollars or if the sum of all payments made to that remittee by the remitter, including the subject payment, in the calendar quarter is thirty dollars or less.
2. At the option of a remitter, a remitter may agree with the remittee that the remittee pay the amount that the remitter would have been required to withhold and remit to the Department on behalf of the remittee pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act. The remittee remits the tax required to be withheld using Form RPD-41357, *Oil and Gas Proceeds Remittee's Quarterly Tax Payment*, or another form of payment such as estimated payments. The remittee payments are due on or before the 25th day of the month following the close of the calendar quarter in which the oil and gas proceeds were paid. The remittee can also satisfy the terms of the agreement by filing its New Mexico income tax return and paying the tax due. The remitter must have a completed Form RPD-41353, *Owner's or Remittee's Agreement to Pay Withholding on Behalf of a Pass-Through Entity or Remitter*, on file at the time it files its annual reporting requirements for the tax year to which the agreement pertains. If the Department notifies the remitter that the remittee has failed to remit the required payment, the

agreement is no longer acceptable by the Department as reasonable cause for failure to withhold. The remitter is not responsible for withholding on oil and gas proceeds paid to the remittee prior to the Department's notification.

3. The remittee maintains its place of business or residence in New Mexico:
 - If a corporation, a signed Form RPD-41354, *Declaration of Principal Place of Business or Residence in New Mexico*, is on file that the corporation's principal place of business is in New Mexico, or
 - If a corporation incorporated in New Mexico, the corporation's incorporation papers are on file, with sufficient portions of those papers to demonstrate incorporation in New Mexico, or information from the Public Regulation Commission web site indicating that the corporation is a New Mexico corporation in good standing and its address, or
 - If an individual, a signed Form RPD-41354, *Declaration of Principal Place of Business or Residence in New Mexico*, is on file that the individual is a resident of New Mexico and declaring the physical location of the individual's abode in New Mexico.
4. Documentation is on file showing that the remittee is granted exemption from the federal income tax by the United States Commissioner of Internal Revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code, including a copy of the remittee's federal Form W-9, or a copy of the determination letter from the IRS.
5. Documentation is on file showing that the remittee is the United States, New Mexico or any agency, instrumentality or political subdivision of either.
6. Documentation is on file showing that the remittee is a federally recognized Indian nation, tribe or pueblo or any agency, instrumentality or political subdivision thereof.
7. Documentation is on file showing that the remitter's payment to the remittee is subject to further distribution by the remittee as a remitter to working interest owners, royalty interest owners, overriding royalty interest owners and/or production payment interest owners. Acceptable proof includes --but is not limited to-- written notification from a remittee or internal documentation such as signed division orders demonstrating that the payment is subject to further distribution by the remittee as a remitter to working interest owners, royalty interest owners, overriding royalty interest owners and/or production payment interest owners.

If you believe that you have a valid reason for not withholding from a remittee, other than the reasons listed above, you must obtain approval from the Secretary before you file your return. Please include with your request detailed information to support an alternative reasonable cause for not withholding. To request the Secretary's approval, submit a written request to the Albuquerque District Office at New Mexico Taxation and Revenue Department, Corporate Income Tax Audit Supervisor, P.O. Box 8485, Albuquerque, NM 87198-8485. For assistance call 505-841-6221.